

CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
801 North First Street, Room 400
San José, California 95110-1795

Hearing Date/Agenda Number
P.C. 06/22/05 Item #:

File Number
CP05-019

Application Type
Conditional Use Permit

Council District
7

Planning Area
South

Assessor's Parcel Number(s)
497-48-003

STAFF REPORT

PROJECT DESCRIPTION

Completed by: Lori Moniz

Location: East side of Lone Bluff Way across from Dadis Way

Gross Acreage: 0.87

Net Acreage: 0.87

Net Density: n/a

Existing Zoning: R-1-2 Residence District

Existing Use: Utility facility (San José Water Company)

Proposed Zoning: no change

Proposed Use: Same, plus 60-foot-high free-standing wireless communications monopole and an associated equipment enclosure

GENERAL PLAN

Completed by: LM

Land Use/Transportation Diagram Designation
Public Park and Open Space

Project Conformance:
☒ Yes ☐ No
☐ See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: LM

North: Single-family attached residences

R-2 Residence District

East: Golf Course

A - Agriculture

South: Golf Course

A - Agriculture

West: Golf Course

R-2 Residence District

ENVIRONMENTAL STATUS

Completed by: LM

☐ Environmental Impact Report found complete
☐ Negative Declaration circulated on
☐ Negative Declaration adopted on

☒ Exempt
☐ Environmental Review Incomplete

FILE HISTORY

Completed by: LM

Annexation Title: Tully No. 10

Date: November 15, 1968

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

☒ Approval
☐ Approval with Conditions
☐ Denial
☐ Uphold Director's Decision

Date: _____

Approved by: _____
☒ Action
☐ Recommendation

OWNER

San José Water Land Company
Attn: Thomas J. Victorine
374 W. Santa Clara Street
San José, CA 95113

CONTACT

Velocitel, Inc
Attn: Marsha Converse
4160-B Hacienda Drive
Pleasanton, CA 94588

APPLICANT/DEVELOPER

Cingular Wireless
651 Gateway Blvd.
South San Francisco, CA 94080

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: LM

Department of Public Works

See Attached

Other Departments and Agencies

None

GENERAL CORRESPONDENCE

None received

ANALYSIS AND RECOMMENDATIONS**BACKGROUND**

The applicant, Cingular Wireless, is requesting a Conditional Use Permit (CUP) to allow a 60 foot tall free-standing wireless communications monopole and associated equipment enclosure located on the east side of Lone Bluff Way across from Dadis Way. The Zoning Ordinance requires a CUP for a wireless telecommunications facility in the R-1-2 Residence Zoning District. The 0.87-acre parcel, owned by San Jose Water Company, includes a few small accessory-type structures, various other utility related equipment and utility poles. The site is flat and includes approximately seven trees.

Other nearby land uses include single-family attached homes to the west across Lone Bluff Way and the Los Lagos Golf Course to the north, east and south. The nearest parcel developed with a residential unit is more than 140 feet away from the proposed monopole.

Project Description

The project proposal would allow a 60 foot tall free-standing wireless communications stealth monopole on the southeastern portion of the site. The proposed monopole, which is designed to look like a tree, would be placed near existing trees located on the subject site. Equipment cabinets mounted on a concrete slab are proposed within a 19 x 14 foot lease area enclosed by a chain link fence.

ENVIRONMENTAL REVIEW

The Director of Planning, Building and Code Enforcement has determined that this project is exempt from environmental review under the provisions of the California Environmental Quality Act (CEQA). The CEQA guidelines include an exemption (section 15303) for new construction or conversion of small structures. The CEQA guidelines do not specifically address monopoles per se. However, 15303c allows an exemption for “a store, motel, office, restaurant or similar “structure” not involving the use of significant amounts of hazardous substances, and not exceeding 2,500 square feet in floor area. In urbanized areas, the exemption also applies to up to four such

commercial buildings not exceeding 10,000 square feet in floor area on sites zoned for such use if not involving the use of significant amounts of hazardous substances where all necessary public services and facilities are available and the surrounding area is not environmentally sensitive”. It is staff’s opinion that the proposed project adequately conforms to the provisions of this section because of the small size of the structure.

GENERAL PLAN CONFORMANCE

The proposed land use is consistent with the San José 2020 General Plan Land Use/Transportation Diagram designation of Public Park and Open Space. This designation applies to lands that are publicly owned, though as in this case, public access may be restricted. The lands with this designation are typically devoted to open space use for the most part, although some incidental development, such as restrooms, playgrounds are allowed. It is intended that this designation be applied only to lands owned by public agencies. The site is owned by the San José Water Land Company. The parcel is surrounded on three sides by the Los Lagos golf course, an appropriate use for this designation.

ANALYSIS

The primary issues analyzed in this report are the project’s conformance to the following: 1) Zoning Ordinance, and 2) City Council Policy 6-20, Land Use Policy for Wireless Communication Antennas. As described in greater detail below, staff’s opinion is that the proposed project conforms to the Zoning Ordinance and is consistent with the provisions of the City’s Wireless Communications Policy.

Conformance to the Zoning Ordinance

Height

The project site is located in the R-1-2 Residence Zoning District. This district has a maximum height limit of 35 feet. However, the Zoning Ordinance allows for the increase in the height of telecommunication facilities (monopoles) to a maximum of 60 feet in the R-1-2 Residence Zoning District, provided that the design of the structure is a “slim pole”. The overall height of the proposed monopole will not exceed 60 feet. The proposed height extension of the existing monopole utilizes a “slim pole” design with design enhancements to disguise the monopole to look like a pine tree.

Setbacks

The proposed monopole will be setback over 80 feet from the front property line at Lone Bluff Way and at least 300 feet from the rear property line, 80 feet from the northerly side property line (adjacent to a parcel in the R-2 Residence zoning district) and 15 feet from the southerly side property line. The proposed equipment enclosure is setback 43 feet from the front, over 300 feet from the rear, and 17.5 feet from the closest side property lines. The setbacks for the proposed monopole and enclosure exceed the minimum requirements for the R-1-2 zoning district of 30 feet for the front, 25 feet for the rear and 15 feet for the interior side setbacks.

Conformance to City Council Policy 6-20 for Wireless Communications Facilities*Visual Impacts*

The intent of the policy is to minimize any impacts of wireless communications facilities. New freestanding monopoles should not be implemented where building mounted or collocated facilities are feasible and would reduce visual impacts. Building-mounted (for example, rooftop) antennas are generally preferable to new monopoles and the current policy encourages such installations. Building-mounted antennas are not feasible at this site, given the height of the existing structures on and near the site. Therefore, the applicant proposed a stealth monopole disguised as an artificial tree to meet the intent of the policy.

The proposed monopole is located adjacent to existing trees located on the site adjacent to Los Lagos golf course. The pole is proposed to be a “stealth” pole with enhancements to disguise it to look like a pine tree in order to visually blend in with the surroundings.

Height

New wireless communications antennas are required to conform to the General Plan and Zoning Ordinance height restrictions. The proposed 60-foot monopole conforms to the General Plan Urban Design height limit for structures other than buildings (such as monopoles) of 100-feet. As previously indicated, the Zoning Ordinance allows for slim pole antennas up to a maximum height of 60 feet.

Setbacks from Residential Uses

The policy recommends that freestanding monopoles be located no closer than a distance equal to one foot for every one foot of structure height from any parcel developed for use as a single-family or multi-family residence. Also, substantial landscaping (10 feet minimum), generally including trees, should be provided adjacent to the residential property line, to buffer the adjoining residential uses. The applicant’s proposal is consistent with the Council Policy in that the existing monopole would be located in excess of 120 feet from the nearest residential uses located to the west of the site across Lone Bluff Way. Landscaping will be placed around the proposed enclosure to screen it from view by the nearby residents.

Performance Standards

This project does not include the installation of power-generating equipment and will therefore easily comply with the noise level performance standards identified in the Zoning Ordinance. Should the applicant wish to include such equipment in the future a development permit would be required and the equipment would be required to meet the performance standards for the Zoning District.

Parking

The project does not impact any parking spaces. Adequate parking is provided for the primary water company facility.

CONCLUSION

The proposed project will accomplished all of the key design objectives of the City's policy for such structures. In anticipation of further on-going improvements in technology related to the wireless communications industry, it may be very likely that service providers will be able to maintain, improve or expand their service network by way of antenna facilities that are even less obtrusive that typically accomplished today. This permit is proposed to include a five (5) year time limit so that the City can re-evaluate the appropriateness of the facility in the context of future improvements to antenna technology.

RECOMMENDATION

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following facts and findings in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding the proposed project:

1. The project site has a designation of Public Park and Open Space on the adopted *San José 2020 General Plan Land Use/Transportation Diagram*.
2. The project site on the east side of Lone Bluff Way across from Dadis Way is in the R-1-2 Residence Zoning District.
3. Wireless communications monopoles are a conditional use in the R-1-2 Residence Zoning District.
4. The subject site or lot is located adjacent to a residentially zoned property and is located across Lone Bluff Way from a residential use.
5. The proposed antennas and equipment enclosure will be located approximately 120 feet from the nearest residential use.
6. Existing development on the subject site including several small structures and utility poles.
7. A 266 square foot equipment enclosure is proposed.
8. The proposed project conforms to the required setbacks from property lines as prescribed in the R-1-2 Residence Zoning District.
9. The proposed monopole is 60 feet in height.
10. The maximum height limit of the R-1-2 Residence Zoning District is 35 feet. However, the Zoning Ordinance includes a height exception for slim pole antennas up to a maximum height of 60 feet.
11. The proposed monopole has been located and designed to visually blend with existing surroundings.

12. The proposed monopole will not eliminate required parking.
13. The proposed monopole is time-conditioned to expire in five years.
14. The City Council Land Use Policy for Wireless Communications Facilities is applicable to this application.
15. Under the provisions of Section 15303 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The project will not have a significant adverse effect on the environment.

The Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The project is consistent with the General Plan Land Use /Transportation Diagram designation of Public Park and Open Space.
2. The proposed project is in compliance with the California Environmental Quality Act (CEQA).
3. The project complies with the applicable provisions of the Zoning Ordinance, Title 20 of the Municipal Code.
4. The proposed project conforms to the City Council's Land Use Policy for Wireless Communication Facilities.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. As conditioned, the proposed use at the location requested will not
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and

- b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit, except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Payment of Recording Fees.** Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara should be submitted to the Director of Planning within 30 days of approval of this permit, but must be submitted prior to issuance of a Building Permit. **Submittal of the recording fee less than one week prior to issuance of a Building Permit will delay the Building Permit issuance** for up to one week to allow for recordation of the permit with the County Recorder. This Permit shall be effective at such time when recordation with the County of Santa Clara occurs.
2. **Acceptance of Permit.** Per Section 20.100.290(B), should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:
 - a. Acceptance of the Permit by the applicant; and
 - b. Agreement by the applicant to be bound by, to comply with, and to do all things required of or by the applicant pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.
3. **Adjustment Required for Landscaping.** Prior to the issuance of a Building Permit, the developer shall secure and agree to implement an adjustment to: 1) plant landscaping around the proposed equipment enclosure to the satisfaction of the Director of Planning, Building and Code Enforcement.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled "Cingular Wireless Services, Inc., Site No.: SNFCCA2048E, Site Name: Coyote Creek Park (San José Water Company)" dated April 8, 2005, last revised June 13, 2005, on file with the Department of City Planning and Building and to the San José Building Code (San José Municipal Code, Title 24).

2. **Nuisance.** This use shall be operated in a manner, which does not create a public or private nuisance. The applicant must abate any such nuisance immediately upon notice by the City.
3. **Construction Hours.** Construction activities shall conform to Title 20, as amended.
4. **Lighting.** This permit allows no new on-site lighting.
5. **Utilities.** All new on-site telephone and electrical service facilities shall be placed underground.
6. **Colors and Materials.** All wireless communications building-mounted antennas colors and materials are to be those specified on the approved plan set.
7. **Public Works Clearance.** Prior to the issuance of Building permits, the applicant will be required to have satisfied all of the following Public Works conditions. The applicant is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits:
 - a. *Flood: Zone A17, Elevation 128.50' 1929 National Geodetic Vertical Datum (NGVD).*
 - i) Elevate equipment cabinets with top of concrete slabs above 128.50' 1929 NGVD or floodproof to the same elevation.
 - ii) Provide adequate anchorage for equipment cabinets to prevent floatation, collapse, or lateral movement resulting from hydrostatic or hydrodynamic loads including buoyancy.
 - iii) An Elevation Certificate (FEMA Form 81-31) for the equipment cabinets, based on construction drawings, is required prior to issuance of a building permit. Consequently, an Elevation Certificate based on finished construction is required prior to Building Final.
 - iv) If the equipment cabinets are to be floodproofed, a Floodproofing Certificate (FEMA Form 81-65) and floodproofing details are required prior to the issuance of a Public Works Clearance.
8. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
 - a. *Adjustment Required.* The developer shall comply with Condition Precedent #3.
 - b. *Construction Plans.* This permit file number, CP05-019, shall be printed on all construction plans submitted to the Building Division.
 - c. *Construction Conformance.* A project construction conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan submittal to the Building Division. Prior to final inspection approval by the Building Department, Developer shall obtain a written confirmation from the Planning Division that the project, as constructed, conforms with all applicable requirements of the subject Permit, including the plan sets. To prevent delays in the issuance of Building Permits, please notify Planning Division staff at least one week prior to the final Building Division inspection date.

- d. *Emergency Address Card.* The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
 - e. *Archaeology.* There shall be monitoring of site excavation activities to the extent determined by a qualified professional archaeologist to be necessary to insure accurate evaluation of potential impacts to prehistoric and/or historic resources.
 - 1) If no resources are discovered, the archaeologist shall submit a report to the Director of Planning, Building and Code Enforcement verifying that the required monitoring occurred and that no further mitigation is necessary.
 - 2) If evidence of any archaeological, cultural and/or historical deposits are found, hand excavation and/or mechanical excavation will proceed to evaluate the deposits for determination of significance as defined by CEQA guidelines. The archaeologist shall submit reports, to the satisfaction of the Director of Planning, describing the testing program and subsequent results. These reports shall identify any program mitigation that the Developer shall complete in order to mitigate archaeological impacts (including resource recovery and/or avoidance testing and analysis, removal, reburial and curation of archaeological resources).
 - 3) In the event that human remains and/or cultural materials are found, all project-related construction shall cease within a 50-foot radius in order to proceed with the testing and mitigation measures required. Pursuant to Section 7050.5 of the Health and Safety Code and Section 5097.94 of the Public Resources Code of the State of California:
 - a) In the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified by the developer and shall make a determination as to whether the remains are native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission, who will attempt to identify descendant of the deceased Native Americans. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the landowner shall re-enter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.
 - b) A final report shall be submitted to the Director of Planning prior to release of a Certificate of Occupancy. This report shall contain a description of the mitigation programs and its results including a description of the monitoring and testing program, a list of the resources found, a summary of the resource analysis methodology and conclusions and a description of the disposition/curation of the resources. The report shall verify completion of the mitigation program to the satisfaction of the Director of Planning.
9. **Anti-Graffiti.** The applicant shall remove all graffiti from structures and fence surfaces within 48 hours of defacement.
10. **Landscaping.** Planting and irrigation are to be provided, as indicated, on the final Approved Plan

Set as adjusted/amended per Condition Precedent #3. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced by the property owner. Irrigation is to be installed in accordance with Part 4 of Chapter 15.10 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.

11. **Certification.** Pursuant to San José Municipal Code, Section 15.10.486, certificates of substantial completion for landscape and irrigation installation shall be completed by licensed or certified professionals and provided to the Department of Planning, Building and Code Enforcement prior to approval of the final inspection of the project.
12. **Co-location.** The applicant and wireless communication facility operator shall facilitate the future co-location of wireless communication antennas on this tower and additions to the at-grade equipment enclosure. The applicant and wireless communication facility operator shall notify the Director of Planning of any proposals by other wireless communication providers to collocate antennas on this tower. The notification shall occur within 30 days of receipt of the proposal, and shall include the file number of this Permit.
13. **Generators.** This permit does not include approval for an emergency back-up generator. Any such improvement would require additional approvals by the City.
14. **Equipment Removal.** The applicant shall remove the wireless communications antennas and associated equipment enclosure from the site at such time as the equipment is no longer in use.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a **Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20**. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.
2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or

- b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.
3. **Time Limit.** This Conditional Use Permit expires and has no further force or effect five years from the date this Permit. At that time, that applicant/owner shall provide information to the City to determine if the wireless communications antenna is still needed, based on improvements in technology or availability of alternative building-mounted opportunities in the vicinity.
4. **Renewal.** The permit holder may seek renewal of a time-conditioned Conditional Use Permit by filing a timely renewal application on the form provided by the Director of Planning, Building and Code Enforcement. In order to be timely, an application for renewal must be filed more than 90 calendar days but less than 180 calendar days prior to the expiration of the Conditional Use Permit. Once a renewal application has been filed in a timely manner, the expiration date of the Conditional Use Permit is automatically extended until either the issuance or denial of the application for renewal has become final.